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UNITED STATES DISTRICT COURT  
2  
NORTHERN DISTRICT OF CALIFORNIA

3  
MICHAEL STOKES,

5  
Plaintiff,

6  
Docket No. 4:19-cv-5743

7  
- against -

8  
JURY TRIAL DEMANDED

9  
DAVIC INCORPORATED

10  
Defendant.

13  
**FIRST AMENDED COMPLAINT**

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Plaintiff Michael Stokes (“Stokes” or “Plaintiff”) by and through his undersigned counsel, as and  
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for his Complaint against Defendant Davic Incorporated (“Davic” or “Defendant”) hereby alleges as  
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follows:

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**NATURE OF THE ACTION**

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1. This is an action for copyright infringement under Section 501 of the Copyright Act. This  
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action arises out of Defendant’s unauthorized reproduction and public display of copyrighted  
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photographs of models, owned and registered by Stokes, a professional photographer. Accordingly,  
21  
Stokes seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101  
22  
*et seq.*

23  
**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in California.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

## PARTIES

5. Stokes is a professional photographer in the business of licensing his photographs for a fee having a usual place of business at 1201 Alvira Street, Los Angeles, California 90035.

6. Upon information and belief, Davic is a domestic business corporation duly organized and existing under the laws of the State of California, with a place of business 4049 18<sup>th</sup> Street, San Francisco, California 94132. Upon information and belief Davic is registered with the California Department of State Division of Corporations to do business in the State of California. At all times material, hereto, Davic has operated their Facebook page at the URL: www.Facebook.com/MobyDickBar (the “Website”).

## **STATEMENT OF FACTS**

#### A. Background and Plaintiff's Ownership of the Photographs

7. Stokes photographed models (the "Photographs"). A true and correct copy of the Photographs are attached hereto as Exhibit A.

8. Stokes is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with the United States Copyright Office and were given registration number VAu 1-185-837, VAu 1-224-488, VA 1-976-132, VA 1-977-391, VA 2-172-279, VAu 1-222-629, VAu 1-085-779, VAu 1-270-353,

1           **B. Defendant's Infringing Activities**

2       10. Davic ran the Photographs on the Website. See URL:

3       <https://www.facebook.com/MobyDickBar/photos/a.121647809646/10154288086634647/?type=3&theater>  
4       er. Screenshots of the Photographs on the Website are attached hereto as Exhibit B.

5       11. Davic did not license the Photographs from Plaintiff for its Website, nor did Davic have  
6       Plaintiff's permission or consent to publish the Photographs on its Website.

7       12. Stokes first discovered the use of the Photographs on the Website in 2019.

8           **CLAIM FOR RELIEF**  
9           **(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
10          **(17 U.S.C. §§ 106, 501)**

11       13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-  
12 above.

13       14. Davic infringed Plaintiff's copyright in the Photographs by reproducing and publicly  
14       displaying the Photographs on the Website. Davic is not, and has never been, licensed or otherwise  
15       authorized to reproduce, publically display, distribute and/or use the Photographs.

16       15. The acts of Defendant complained of herein constitute infringement of Plaintiff's  
17       copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright  
18       Act, 17 U.S.C. §§ 106 and 501.

19       16. Upon information and belief, the foregoing acts of infringement by Defendant have been  
20       willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

21       17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's  
22       copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits  
23       pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

## **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Davic be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
  2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
  3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
  4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. 505;
  5. That Plaintiff be awarded pre-judgment interest; and
  6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
November 8, 2019

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